

Claims 1-17, 19-33, 37 and 38 are presented for examination.

The amendments and remarks filed on June 18, 2009 have been received and entered.

Claims 1-17, 19-33, 37 and 38 are rejected under 35 U.S.C. 103 (a) as being unpatentable over WO 98/34644 in view of Chen (US 6,602,274) for the reasons set forth on pages 2-6 of the office action of March 18, 2009 and the following reasons.

Chen teaches the damage to normal tissue in the path of photosensitizer. The normal tissue in the path of the beam will likely to be activated and causes collateral normal skin damage. See column 1, lines 57-67, column 2, lines 35-47 and column 3, lines 1-10. The above reference makes clear that photodynamic therapy can cause damage to the normal tissues surrounding or adjacent to the target tissue.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues the non-consistent approach by the Office giving the scope of enablement rejection for "preventing" and at the same time giving an obviousness rejection. It is the examiners' position that applicant's specification fails to provide enablement for "preventing", which means prevention from happening any inflammation. However, in the obviousness rejection the prior art is used to show that inflammation can be treated or reduced, by a low dose photodynamic therapy, which is different than preventing. Applicant's arguments regarding the effect of photodynamic therapy on the tissues beyond the treated area have been noted. The newly relied upon reference clearly teach the effect of photodynamic therapy on the tissues beyond the treated area and damage caused to such tissues by such treatment. Applicant acknowledges the prior art recognition of a

need for reduction and prevention of inflammation caused by PDT, however applicant argues that there is no teachings that low dose PDT can be used for treating such inflammation. It is the examiner's position that WO Patent clearly teaches the use of low dose PDT for treating inflammation caused in the tissue. Therefore, it would have been obvious to a person skilled in the art to use a low dose PDT for the treatment of any inflammation regardless of the cause or source in the absence of evidence to the contrary. Applicant's declaration has been carefully reviewed. The declaration shows that although the inflammation caused by PDT treatment causes the possibility of tumor relapse after a single dose treatment, but taking advantage of the inflammation a double dose treatment was used. Applicant is trying to show that there would be no motivation to conclude that inflammation reaction should be treated or prevented, considering that Feritas teaches the second dose of PDT was used for the beneficial effect of the inflammation on the tumor cells. The arguments have been noted. Feritas article was published in 1991. However, the later published document such as the WO patent recognizes the need for reduction of inflammation caused by PDT in the injured and pre-injured tissues. The WO patent also teaches the use of low dose PDT for the treatment of inflammation. Therefore, it would have been obvious to a person skilled in the art to use low dose PDT for the treatment of inflammation caused by any source in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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ZF
/Zohreh A Fay/
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